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Wong Kok Leong & Anor v RHB Bank Bhd

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A-02–461–02 OF 2012
ABDUL WAHAB PATAIL, ZAWAWI SALLEH AND HAMID SULTAN JJCA
4 SEPTEMBER 2014

C

Land Law — Lien — Lien holder's caveat — Application dismissed by High Court — Whether judgment pursuant to s 281 of the National Land Code must be obtained first — Cause of action — Whether limitation had set in

D The respondent had filed a lien holder's caveat in respect of the appellants' title in 1991 and 13 years later, the respondent filed an application to foreclose the properties held under the lien holders' caveat. However, the High Court dismissed the action on the grounds that the respondent had not obtained judgment pursuant to s 281(1) of the National Land Code ('the NLC') against E the appellants in respect of the lien holder's caveat. In addition to that, the respondent had given a loan to the developer of the property known as Teng Kong Enterprise Sdn Bhd which had been wound up and the titles were secured for the purpose of the loan. The respondent cause of action if any against the appellants would have risen in 1989 when the respondent F terminated the loan to the developer. The appellants complained that the respondent had set on its rights and limitation had set in and the respondent's cause of action if any relating to the lien holder's caveat in law had not been productively crystallised by the respondent within the permissible time frame as envisaged by the Limitation Act 1953 and the NLC and in consequence of G laches the appellants said they were entitled to the relief claimed. The High Court dismissed the appellant's claim.

Held, allowing the appeal with costs:

H (1) The respondent must comply with s 281 and crystalise his cause of action by filing a suit and obtain a judgment and if necessary proceed with foreclosure proceedings as set-out in s 281 of the NLC. If he fails to do so and/or if limitation has set in, s 331 will become applicable to provide relief on the facts of this case and s 328(1) of the NLC states that a private I caveat shall lapse at the expiry of six years from the time it was lodged (see para 7).

(2) The appellants need not seek any declaration to get the lien holder's caveat removed and obtain the title to the relevant properties. The limitation issue will only apply to the respondent in respect of ss 281 and

331 of the NLC, as to the cause of action. The appellant was not pursuing a cause of action against the respondents (see para 11).

(3) A caveat has a specific purpose and is not a cause of action but a quick relief to protect interest (capable of being protected under the NLC) in the land in the nature of a statutory injunction and it is never meant to assist the indolent as in the instant case (see para 13).

[Bahasa Malaysia summary

Responden telah memfailkan kaveat pemegang lien berkaitan hakmilik perayu-perayu pada tahun 1991 dan 13 tahun kemudiannya, responden memfailkan permohonan untuk merampas hartanah yang dipegang di bawah kaveat pemegang lien. Mahkamah Tinggi walau bagaimanapun menolak tindakan atas alasan bahawa responden tidak memperolehi penghakiman berikutan kepada s 281(1) Kanun Tanah Negara ('KTN') terhadap perayu-perayu berkaitan kaveat pemegang lien. Tambahan kepadanya, responden telah memberikan pinjaman kepada pemaju hartanah dikenali sebagai Teng Kong Enterprise Sdn Bhd yang mana telah digulungkan dan hakmilik dijamin bagi tujuan pinjaman. Kausa tindakan responden jika ada terhadap perayu-perayu akan berbangkit pada tahun 1989 apabila responden menamatkan pinjaman kepada pemaju. Perayu-perayu mengadu bahawa responden telah menetapkan hak dan had limitnya telah berakhir dan kausa tindakan responden jika ada berkaitan kaveat pemegang lien dari segi undang-undang tidak ditunjukkan secara produktif oleh responden dalam jangka masa yang dibenarkan seperti yang ditetapkan oleh Akta Had Masa 1953 dan KTN dan akibat kelewatan perayu-perayu menyatakan mereka berhak kepada relief yang dituntut. Mahkamah Tinggi menolak tuntutan perayu.

Diputuskan, membenarkan rayuan dengan kos:

(1) Responden mesti mematuhi s 281 dan menunjukkan kausa tindakannya dengan memfailkan tindakan dan memperolehi penghakiman dan jika perlu meneruskan dengan prosiding perampasan harta seperti yang ditetapkan di dalam s 281 KTN. Jika dia gagal untuk berbuat sedemikian dan/atau jika had masa telah berakhir, s 331 boleh diguna pakai untuk memperuntukkan relief atas fakta kes ini dan s 328(1) KTN menyatakan bahawa kaveat persendirian akan luput pada akhir tempoh enam tahun dari masa ia dimasukkan (lihat perenggan 7).

(2) Perayu-perayu tidak perlu memohon apa-apa perisytiharan untuk mendapatkan kaveat pemegang lien dipotong dan mendapatkan hakmilik kepada hartanah yang relevan. Isu had masa hanya diguna pakai kepada responden berkaitan ss 281 dan 331 KTN, sebagai kausa tindakan. Perayu bukan meneruskan kausa tindakan terhadap responden-responden (lihat perenggan 11).

(3) Kaveat mempunyai tujuan spesifik dan bukan kausa tindakan tetapi relief segera untuk melindungi kepentingan (berkebolehan untuk dilindungi di bawah KTN) dalam tanah dalam sifat injunksi statutori dan ia bukan bermaksud untuk membantu orang yang malas seperti dalam kes ini (lihat perenggan 13).]

Notes

For a case on lien holder's caveat, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) para 3779.

Cases referred to

Eng Mee Yong & Ors v Letchumanan [1979] 2 MLJ 212, PC (refd)
Perwira Habib Bank (M) Bhd lwn Loo & Sons Realty Sdn Bhd & Satu Lagi (No 2) [1996] 3 MLJ 421, CA (refd)
Sakapp Commodities (M) Sdn Bhd v Cecil Abraham [1998] 4 MLJ 651; [1998] 4 CLJ 812, CA (not folld)
Sayang Plantation Bhd v Koh Siak Poo [2006] 1 MLJ 230; [2006] 1 CLJ 1163, CA (refd)

Legislation referred to

Limitation Act 1953
National Land Code ss 281, 281(1), 328(1), 331

Appeal from: Originating Summons No 24–1161 of 2001 (High Court, Ipoh)

GK Ganesan (S Malliga with him) (Malliga & Assoc) for the appellants.
Asbir Kaur Sangha (Asbir Hira & Co) for the respondent.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellants'/plaintiffs' appeal against the respondent/defendant in respect of the High Court refusing to order the defendant to release the title to the appellants notwithstanding the defendant's cause of action on a lien holder's caveat was time barred and the respondents had not taken any judgment against the appellants. The prayers of the appellants in the originating summons read as follows:

(a) satu pengisytiharan bahawa tiada tindakan undang-undang boleh dimulakan oleh pihak defendan untuk mendapat kembali kehutangan terhadap pihak plaintif-plaintif berdasar kepada Kaveat Pemegang Lien yang dimasukkan oleh pihak defendan dan didaftarkan di pejabat Pendaftar hakmilik Tanah Negeri Perak pada 11-4-1990 melalui Perserahan No: 1924/90 Jilid: 651 Folio: 69 terhadap tanah-tanah yang dimiliki oleh pihak Plaintif Pertama seperti diperihalkan di dalam Jadual 'A' yang dilampirkan disini dan melalui Perserahan No: 1925/90 Jilid: 651

Folio: 70 terhadap tanah-tanah yang dimiliki oleh pihak Plaintif Kedua seperti diperihalkan di dalam Jadual 'B' yang dilampirkan disini, kesemuanya di Mukim Batang Padang, Daerah Tapah, Negeri Perak Darul Ridzuan ['Kaveat Pemegang Lien tersebut'] dan/atau untuk melaksanakan Kaveat Pemegang Lien tersebut memandangkan pembatasan masa di sisi undang-undang.

(b) Kavet Pemegang Lien yang dimasukkan oleh pihak Defendan dan didaftarkan di pejabat Pendaftar Hakmilik Tanah Negeri Perak pada 11-4-1990 melalui Perserahan No: 1924/90 Jilid: 651 Folio: 69 terhadap tanah-tanah yang dimiliki oleh pihak Plaintif Petama seperti diperihalkan di dalam Jadual 'A' yang dilampirkan disini dan melalui Perserahan No. 1925/90 Jilid: 651 Folio: 70 terhadap tanah-tanah yang dimiliki oleh pihak Plaintif Kedua seperti diperihalkan di dalam Jadual 'B' yang dilampirkan disini, kesemuanya di Mukim Batang Padang, Daerah Tapah, Negeri Perak, Darul ridzuan ['Kaveat Pemegang Lien tersebut'] hendaklah dibatalkan;

(c) Pihak Defendan hendaklah dalam jangkamasa dua(2) minggu setelah disampaikan dengan sesalinan Perintah yang dibuat atas permohonan tersebut di atas bagi pembatalan Kaveat Pemegang Lien tersebut yang dimasukkan oleh pihak Defendan yang didaftarkan di pejabat Pendaftar Hakmilik Tanah Negeri Perak Darul Ridzuan pada 11-4-1990 itu mengembalikan salinan ASAL surat ikatan hakmilik kepada tanah-tanah yang dimiliki oleh pihak Plaintif Pertama seperti diperihalkan di dalam Jadual 'A' disini dan tanah-tanah yang dimiliki oleh pihak Plaintif Kedua seperti diperihalkan di dalam Jadual 'B' di dalam ini, kesemuanya di Mukim Batang Padang, Daerah Tapah, Negeri Perak, Darul ridzuan kepada Tetuan Malliga & Associates, Peguamcara bagi pihak Plaintif Pertama dan pihak Plaintif Kedua di tindakan ini;

(d) Pihak Pendaftar Hakmilik atau Pentadbir Tanah, Negeri Perak Darul Ridzuan menurut keadaanya, hendaklah dengan serta-mertanya setelah disampaikan dengan sesalinan Perintah yang dibuat atas permohonan tersebut di atas bagi pembatalan Kaveat Pemegang Lien tersebut yang dimasukkan oleh pihak Defendan yang didaftarkan di pejabat Pendaftar Hakmilik Tanah Negeri Perak Darul Ridzuan pada 11-4-1990 itu membuat satu catitan kemasukan dan memorial dalam daftar dokumen hakmilik mengenai pembatalan Kaveat Pemegang Lien tersebut mengenai tanah-tanah berkenaan tersebut di atas yang dimiliki oleh pihak Plaintif Pertama dan Plaintif Kedua masing-masing;

(e) Suatu Perintah hendaklah diperbuatkan oleh Mahkamah yang mulia ini mengenai gantirugi yang dialami oleh pihak Plaintif Pertama atau pihak Plaintif Kedua masing-masing atau sesiapa atau mana-mana badan berkenaan;

(f) Suatu tarikh perbicaraan di hadapan Timbalan/Penlong Kanan Pendaftar untuk penetapan gantirugi yang dialami oleh pihak Plaintif Pertama atau pihak Plaintif Kedua masing-masing atau sesiapa atau mana-mana badan berkenaan hendaklah ditetapkan;

(g) Fee peguamcara, kos dan perbelanjaan di dalam ini dan bersampingan dengannya yang dikehendaki dibayar oleh pihak Plaintif Pertama dan pihak Plaintif Kedua itu hendaklah ditanggung, digantirugi dan dibyar oleh pihak Defendan kepada pihak Plaintif Pertama dan pihak Plaintif Kedua;

(h) Relif-relif yang lain atau lanjut sebagaimana yang difikir sesuai dan sepatutnya oleh Mahkamah yang mulia ini.

[2] After hearing the parties we allowed the appeal granting prayers (b), (c) and (d) and cost of RM15,000 to be paid by the respondent to the appellants for costs here and below.

[3] My learned brothers Abdul Wahab bin Patail JCA and Mohd Zawawi bin Salleh JCA have read the draft judgment and approved the same. This is our judgment.

[4] The memorandum of appeal, inter alia, reads as follows:

1. Yang Arif Pesuruhjaya Kehakiman telah silap di segi fakta-fakta dan di sisi undang-undang dengan menolak permohonan-permohonan Perayu-perayu kerana had masa statutori dijadikan sebagai asas untuk mendapatkan perintah pengistiharan.

2. Yang Arif Pesuruhjaya Kehakiman telah silap di sisi undang-undang dan dalam fakta-fakta berkenaan tidak mempertimbangkan kes *Sakapp Commodities (M) Sdn Bhd lwn Cecil Abraham (executor of the estate of Loo Cheng Ghee)* [1998] 4 MLJ 651 hendaklah dibezakan atas perkara-perkara, fakta-fakta dan alasan-alasan yang dinyatakan di dalam kes itu di Mahkamah bawah.

3. Yang Arif Pesuruhjaya Kehakiman telah silap di sisi undang-undang dan dalam segala fakta-fakta dan perkara-perkara berkenaan tidak mempertimbangkan dan gagal mengambil kira bahawa:

   (a) Tindakan Perayu-perayu adalah berdasar kepada kausa tindakan di dalam penentuan dan keputusan 'legal character, right, interest or issue' menurut dan di bawah Seksyen 41 Akta Relif Spesifik 1951 atas alasan had masa 'laches' dan perbuatan ketakekuitan sebagaimana diperuntukkan di sisi undang-undang;

   (b) Perayu-perayu telah membangkitkan isu had masa mengenai Seksyen 21 Akta Pembatasan 1953 dan pihak Responden telah membangkitkan Seksyen 16 Akta Pembatasan 1953 masing-masing di dalam kes itu di Mahkamah bawah merupakan satu isu utama dan mustahak yang perlu dan hendaklah didengarkan dan dipertimbangkan oleh Mahkamah di mana ia juga akan menjimatkan masa dan kos Mahkamah dan kesemua pihak-pihak berkenaan pada masa itu atau kelak;

(c) Responden telah gagal, enggan dan/atau mengabaikan kewajipannya untuk melaksanakan hak dan tuntutannya berdasar kepada Kaveat Pemegang Lien tersebut di dalam jangkamasa yang diperuntukkan di sisi undang-undang dan Responden tidak memberi apa-apa penjelasan dan alasan mengenai kegagalan dan keengganan berkenaan;

(d) Apa-apa tindakan undang-undang yang dicadangkan dan dimulakan oleh Responden samada untuk menuntut dan memperolehi penghakiman dan/atau kemudiannya melaksanakan tindakan sekat-tebusan [*foreclosure*] terhadap Perayu-perayu hendaklah dibataskan oleh had masa sebagaimana diperuntukkan di sisi undang-undang; dengan demikian, ia adalah mengaibkan, remeh atau menyesahkan dan/atau merupakan penyalah proses Mahkamah dan/atau ia boleh menjelaskan, menghalang atau melengahkan perbicaraan tindakan kemudiannya dengan adil memandangkan isu had masa yang tertentu itu;

4. Yang Arif Pesuruhjaya Kehakiman sepatutnya mempersoalkan dan mengambil perhatian dan notis dalam kepentingan ekuiti mengenai kedudukan undang-undang yang ditegaskan oleh Responden bahawa 'The Defendant has the right to the lien-holder's caveat and to retain possession of the titles even if it may not be able to get relief of the order for sale if my learned friend's contention is held to be correct, which is denied' itu adalah tidak adil, dan tidak saksama sekali di dalam apa-apa hal dan kedudukan, dan ia adalah menyalahi dan bertentangan keadilan asasi.

5. Yang Arif Pesuruhjaya Kehakiman telah silap di sisi undang-undang dan dalam fakta-fakta tidak mempertimbangkan bahawa terdapat perbuatan yang tidak wajar dan tidak berekuiti dilakukan oleh Responden, iaitu 'laches' setakat itu, lebih dua puluh satu (21) tahun, pihak Responden tidak memfailkan tindakan undang-undang untuk memperolehi penghakiman yang sah di sisi undang-undang terhadap Perayu-perayu dan seterusnya melaksanakan haknya di bawah Kaveat Pemegang Lien tersebut; dengan demikian, pada masa kini dan pada masa material kemudiannya, pihak Responden hendaklah diestopkan dan dihalang daripada berbuat sedemikian.

6. Yang Arif Pesuruhjaya Kehakiman telah gagal dalam mempertimbang-kan dan/atau menghargai dan/atau menilai secukupnya kesemua keterangan-keterangan yang telah dikemukakan oleh Perayu-perayu kepada Mahkamah yang mulia itu hendaklah dan sepatutnya menggunakan budibicara yang sedia ada untuk membenarkan permohonan-permohonan pengisytiharan itu.

BRIEF FACTS

[5] The instant case has chequered history and it will serve no useful purpose to repeat the same save to deal with the core issues.

[6] The respondent had filed a lien holder's caveat in respect of the appellants' title in 1991. The respondent in 2004 (after 13 years), had filed an application to foreclose the properties held under the lien holders' caveat. However, the High Court dismissed the action on the grounds that the respondent had not obtained judgment pursuant to s 281(1) of the National Land Code ('the NLC') against the appellants in respect of the lien holder's caveat. Section 281(1) of the NLC reads as follows:

281 Creation and effect, of liens.

(1) Any proprietor or lessee for the time being may deposit with any other person or body, as security for a loan, his issue document of title or, as the case may be, duplicate lease; and that person or body —

(a) may thereupon apply under Chapter 1 of Part Nineteen for the entry of a lien-holder's caveat; and

(b) shall, upon the entry of such a caveat, become entitled to a lien over the land or lease.

(2) Where the holder of any lien has obtained judgment for the amount due to him thereunder, he shall be entitled to apply to the Court for, and obtain forthwith, an order for the sale of the land or lease.

[7] The determination and/or removal of the lien holders' caveat is set-out in s 331 of the NLC and it reads as follows:

331 Determination of lien-holders' caveats,

(1) A lien-holder's caveat may be withdrawn at any time by a notice in writing given to the Registrar by the person or body for the time being entitled to the benefit of the lien, and the Registrar shall cancel the entry of the caveat as soon as may be after the notice is received.

(2) Where any land or lease subject to a lien-holder's caveat is sold pursuant to an order of the Court made by virtue of sub-section (2) of section 281 —

(a) any certificate of sale presented for registration by the purchaser thereof shall be deemed for the purposes of this Chapter to have been presented with the consent of the lien-holder; and

(b) upon the registration of the certificate, the caveat shall lapse, and the entry thereof be cancelled accordingly by the Registrar.

(3) The Registrar may cancel any lien-holder's caveat upon proof to his satisfaction that all sums due under the lien have been duly paid.

(4) Where the Court is satisfied that any lien-holder's caveat ought not to have been entered, or ought to have been withdrawn, it may order —

(a) the cancellation thereof by the Registrar, and

(b) if the entry or failure to withdraw has caused damage or loss to any person or body, the payment of compensation by the person or body at whose instance the entry was made or, as the case may be, by whom the withdrawal ought to have been effected.

(5) On cancelling the entry of any caveat pursuant to this section, the Registrar shall note on the register document of title the reason for the cancellation and the date thereof; and where any such entry is cancelled by reason of the withdrawal of the caveat, the Registrar shall give notice of the withdrawal to the person or body for the time being entitled to the land or lease formerly affected.

(6) Every cancellation under sub-section (5) shall be signed and sealed.

What is important to note is that the respondent must comply with s 281 and crystalise his cause of action by filing a suit and obtain a judgment and if necessary proceed with foreclosure proceedings as set-out in s 281 of the NLC. If he fails to do so and/or if limitation has set in s 331 will become applicable to provide relief on the facts of this case. And s 328(1) of the NLC states that a private caveat shall lapse at the expiry of six years from the time it was lodged. In *Sayang Plantation Bhd v Koh Siak Poo* [2006] 1 MLJ 230; [2006] 1 CLJ 1163, the Court of Appeal had this to say:

> Since a lien-holders caveat has the like effect to that of private caveat, the effect of a private caveat would also apply with equal force to a lien-holders caveat.

[8] The appellants in the instant case had filed the originating summons seeking the prayers set-out above.

[9] A point to be considered in this case is that the respondent had given a loan to the developer of the property known as Teng Kong Enterprise Sdn Bhd (which has been wound up) and the titles were secured for the purpose of the loan. The respondent cause of action if any against the appellants would have risen in 1989 when the respondent terminated the loan to the developer. The appellants complain that the respondent had set on its rights and limitation had set in and the respondent's cause of action if any relating to the lien holder's caveat in law has not been productively crystallised by the respondent within the permissible time frame as envisaged by the Limitation Act 1953 and the NLC and in consequence of laches the appellants say they are entitled to the relief claimed.

[10] The learned judicial commissioner has written a 8 page judgment setting out the fact and in essence had not allowed the appellants' prayers on the grounds that 'limitation' issue cannot stand as a cause of action and it can only be taken as a defence. That part of the judgment reads as follows:

> Pihak Defendan menentang permohonan ini dan berhujah berdasarkan nas dalam kes Mahkamah Rayuan *Sakapp Commodities (M) Sdn Bhd v Cecil Abraham (executor*

of the estate of Loo Cheng Ghee) [1998] 4 MLJ 651.

Dari nas kes tersebut, Mahkamah ini memahami prinsip undang-undang yang tidak membenarkan plaintif menjadikan sekatan had masa sebagai kausa tindakan. Sebaliknya sekatan had masa hanya boleh digunakan untuk membela tindakan. (It is merely a defence to an action).

[11] In the instant case, we do not think *Sakapp Commodities (M) Sdn Bhd v Cecil Abraham* [1998] 4 MLJ 651; [1998] 4 CLJ 812 case is relevant. The appellants in the instant case need not seek any declaration to get the lien holder's caveat removed and obtain the title to the relevant properties. The limitation issue will only apply to the respondent as we have stated earlier in respect of ss 281 and 331 of the NLC, as to cause of action. The appellant is not pursuing a cause of action against the respondents. The distinction is like apple and orange and must be appreciated to understand the simple issues involved in this case.

JURISPRUDENCE RELATING TO CAVEAT

[12] Caveats per se cannot be equated to a cause of action. It stands only as a statutory injunction to preserve rights which have not been crystallised by due process of law. The law also does not permit a caveat which has been lodged to be sustained if the said rights are not capable of being protected by law for various reasons including laches. Whether it is a private caveat or lien holder's caveat, etc it all comes within the limited statutory guidelines set-out in the NLC. The case laws relating to private caveat or lien holder's caveat or trust caveat or registrar's caveat will be relevant for the courts to determine whether the caveat can be sustained or ought to be removed. Much judicial time will be saved on explaining the jurisprudence of caveat by setting out pp 48–54 of *Janab's Key to Practical Conveyancing and Islamic Banking*, (2nd Ed), (2013) which reads as follows:

(a) Caveat

Caveat generally means a formal notice or warning given by a party interested in the subject matter. Caveat under the code means a registered caveat. Under section 322 of the code a private caveat binds the land and prohibits any form of encumbrances in the title except as stated in section 322 of the code.

The Amendment Act 2001 to the code allows a private caveat to be lodged in respect of undivided share of the land or part of the land. Previously the private caveat was binding on the land in respect of the interest the land respecting to of the interest of the caveator. The Amendment Act 2001 to the code requires the statutory declaration when lodging the private caveat, to contain a plan of the part of the land or the description of the undivided share. The caveat will only bind that part of the caveator's

interest and not the whole of the land itself, thereby allowing the registered owner to deal with the land, excluding that part which has been caveated.

Caveat under section 5 of the code means a registered caveat. Registered under the code means, registered in accordance with the provisions of the code or any previous land law. The code itself does not define what a 'caveat' is.

A caveat acts as a notice when registered according to the code by the caveator (the person who executes the caveat) of his legal or beneficial interest in the said land and gives the caveator the opportunity of protecting any existing right or of establishing an existing claim.

In practice, it is said that a caveat is 'lodged' or 'entered'. Some authors are of the view that a caveat unlike a dealing with land which derives its statutory effect from the act of registration, in so far as it may be effective at all, gains that effect from the mere act of lodgement at the Land Office, and such effect as it has comes into operation immediately.

It must be emphasized that not only registered or registrable interests in land can be a subject matter of a caveat. There may be other interest, which may be capable of being protected by a caveat.

In *Registrar of Titles, Johore v Temenggong Securities Ltd.* [1976] 2 MLJ 44, Lord Diplock observed:

The restriction under the Torrens system on the kinds of interests in land which are capable of being registered does not prevent the creation of other kinds of interests in land or dealing with them. In particular it does not prevent or restrict the creation of beneficial interests in land whether under express trusts or under constructive or resulting trusts arising by operation of Malayan law, which in this respect is derived from the rules of equity in force in England in 1956.

In *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212, Lord Diplock observed:

The system of private caveats is substituted for the equitable doctrine of notice in English land law. By section 322(2) the effect of entry of a caveat expressed to bind the land itself is to prevent any registered disposition of the land except with the caveator's consent until the caveat is removed. This is a very grave curtailment of the rights of the proprietor, yet it can be imposed at the instance of anyone who makes a claim to title to the land, however baseless that claim may turn out to be. By section 324 the Registrar is required to act in an administrative capacity only; he is not concerned with the validity of the claim on which the caveat purports to be based. If the document is in the correct form he must enter the caveat on the register and leave the registered proprietor to secure its removal and to claim compensation from the caveator for any damage he has suffered by reason of the entry of the caveat having been obtained by the caveator without reasonable cause.

The caveat under the Torrens system has often been likened to a statutory injunction of an interlocutory nature restraining the caveatee from dealing with the land pending the determination by the court of the caveator's claim to title to

the land, in an ordinary action brought by the caveator against the caveatee for that purpose. Their Lordships accept this as an apt analogy with its corrollary that caveats are available, in appropriate cases, for the interim protection of rights to title to land or registrable interest in land that are alleged by the caveator but not yet proved. Nevertheless their Lordships would point out that the issue of a caveat differs from the grant of an interlocutory injunction in that it is issued ex parte by the Registrar acting in an administrative capacity without the intervention of the court and is wholly unsupported by any evidence at all. Unless there were some speedy procedure, open to the registered proprietor to get the caveat set aside in cases where the caveator's claim is baseless or frivolous or vexatious, the Torrens system of land registration and conveyancing, so far from giving certainty to title to land in Malaya, would leave the registered proprietor in a more precarious position as respects his powers of disposition of his land than an unregistered proprietor under English law.

In *N Vangedaselam v Mahadevan & Anor* [1976] 2 MLJ 161, Suffian LP observed:

It is important to remember that a caveat is not final and conclusive, that it is like an interim injunction and its purpose is only to preserve the status quo pending the taking of steps by the caveator to enforce his claim to an interest in the land by proceedings in the courts.

In *Macon Works & Trading Sdn.Bhd. v Phan Hon Chin* [1976] 2 MLJ 177 Hashim Yeop A. Sani J. (as His Lorship then was) observed:

It has been well established that as far as our Land Code is concerned the whole system of caveats is founded on the principle that they exist for the protection of the alleged as well as proved interest and therefore not only is a person who has a right to a registrable interest in land who may enter a caveat but also any person claiming title to it or any registrable interst in any alienated land or even claiming only a right to such title or registrable interest may enter a caveat.

In *Koh Ah Soon v Ooi Kar Seng (Properties) Sdn Bhd* [1995] 3 MLJ 293, among the issues was whether the purchaser had caveatable interest when the sale and purchase agreement had not been executed but the salient terms have been agreed upon. Shaik Daud JCA observed:

The trial judge had rightly held that there were serious issues to be tried as to whether a concluded agreement existed. However, the trial judge was wrong in not allowing the appellant to maintain the caveat and the injunction. Land being a valuable and special commodity, once lost, might not adequately be compensated by damages, and there was clear evidence in this case that the respondent was carrying out negotiations with potential buyers to dispose of the property. It followed that the balance of convenience and justice was in favour of maintaining the status quo. (*Trans-Summit Sdn Bhd v Chun Nyook Lin* [1995] 2 MLJ 247 C.A.)

In *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 783, the Court of Appeal considered whether there was a caveatable interest in an unconcluded contract. The court held that:

(1) In order to sustain a caveat, a caveator must first pass through three stages: A

(i) whether he has disclosed a caveatable interest in his application under s 323(1) of the Code;

(ii) if he has established a caveatable interest, then, whether the evidence produced in support of his claim discloses a serious question to be tried; and B

(iii) if both questions are resolved in the caveator's favour, then whether the balance of convenience or justice, lies in favour of the caveat remaining on the register pending the disposal of his suit.

(2) There was no assertion in the application that there was a concluded contract for the sale and purchase of the land. In the absence of such an assertion, it could not be said that the respondent had a claim to the title to the land. Until and unless a purchaser has an enforceable contract for the sale of land, he can lay no claim to the title to registered land. A fortiori, he has no interest that is capable of protection by the entry of a caveat. C D

In *Tsoi Ping Kwan v Medan Juta Sdn Bhd & Anor* [1996] 3 MLJ 367, the Court of Appeal considered the principles for the removal of the caveat. Allowing the appeal as against the first respondent company to the extent that the appellant had a caveatable interest in the property, but refusing to permit re-entry of the caveats by the appellant, the court held: E

(1) The second respondent had, in good faith, accepted the order of 23 January 1996. The conduct of the appellant in all the circumstances of the case constituted encouragement upon which the second respondent company acted. Suffice that it altered its position. There was no necessity that it did so to its detriment. F

(2) It would be wholly unjust and inequitable to permit the appellant to contend that the caveats should remain as against the second respondent company which, in the light of the circumstances, was entirely innocent. There were other reasons which tilted the balance in favour of the second respondent company. It had entered into security arrangements with financial institutions to raise funds to develop the lands and had effected sub-sales of subdivided plots to third party purchasers. If the court were to direct the re-entry of the caveat, the consequences would prove injurious to the second respondent company and other innocent persons. G

(3) However, the appeal as against the first respondent company was allowed to the extent that the appellant had a caveatable interest in the property. H

(4) The court agreed with the respondents' counsel that the power conferred by s 69(4) of the Act is confined to making ancillary orders that would have the effect of completely giving the remedy which this court intends to give when either allowing or dismissing an appeal. I

(5) If the court were to make an order directing the first respondent company to provide security to meet the appellant's claim in the suit brought by him, it would most certainly have the effect of pre-judging the merits of his appeal against the refusal of a Mareva injunction. Further, to direct the provision of

security in this appeal would raise the spectre of undue preference in the appellant's favour.

(6) As for costs, taking into account all matters relevant to the exercise of the court's discretion, the court considered that the fair and just order that ought to be made in the circumstances of this case was to direct the first respondent company to bear all the costs of this appeal, including the costs of the second respondent company. The order of costs made in favour of the first respondent company by the High Court was set aside. The first respondent company was ordered to pay to the appellant the costs of the proceedings in the court below. The deposit paid into court by the appellant was ordered to be refunded to him.

In *Lim Ah Moi v AMS Periasamy a/l Suppiah Pillay* [1997] 3 MLJ 323, the Court of Appeal outlined the principle for removal of caveat. The court stated:

(1) It is well settled that a caveat acts as a statutory injunction which fetters a registered proprietor from dealing with his property and exercising all the rights conferred upon him by the Code. Because of its far-reaching effect, it is vital that claims made by a caveator are enforced by action without undue delay.

(2) Whether a caveat ought to remain or be removed involves the exercise of discretion by the judge hearing an application under s 327 of the Code. Particular attention should be paid to the words 'may make such order on the application as it may think just' that appear in the section. These words make it clear that a court hearing an application to remove a caveat is very much concerned with the justice of the case. The process involves a balancing of competing considerations and an evaluation of the evidence and the facts of each particular case until the balance conclusively shifts in one direction or the other. On the facts, it was unconvincing that discretion was wrongly exercised by the judge in this case.

[see *Paya Terubong Estates Sdn Bhd v Pusaka Warisan Sdn Bhd* [1998] 2 MLJ 463; *Vijayalakshimi Devi a/p Nadchatiram v Danapakia Devi a/p Nadchatriam* [1998] 589 CA.].

The code recognises four classes of caveats. They are as follows:-

(a) private caveat

(b) lien-holders caveat

(c) trust caveat

(d) registrar's caveat

(b) Private Caveat

The most common type of caveats in practice falls under this category. A private caveat prohibits registration of dealings in land or any particular interest therein including a certificate of sale. [Section 322 of the code].

The code sets out the person who has the locus standi to lodge a private caveat and the procedure for its application. Section 323 (2) of the code requires every

application for entry of a private caveat for the nature of the claim to be stated and requires the same to be verified. Failure to do so may be fatal and the court can order the caveat to be removed for non-compliance. [*Goh Keng How v Raja Zainal Abidin bin Raja Hussin & Anor* [1995] 3 MLJ 6].

A private caveat takes effect from the time of receipt of the application. The procedure upon receipt of the application by the Land Office is set-out in section 324 of the code. A private caveat may be withdrawn at any time. The procedure is set-out in section 325 of the code. There is provision under the code for the removal of private caveat by the Registrar. The Court is empowered to remove private caveat. [Section 327 of the code]. A private caveat lapses at the expiry of six years from the time from which it took effect. [Section 328 of the code].

The code makes provision for compensation for wrongful caveats and limits repeated entry of caveats. [Section 329 of code].

(c) Caveat

(1) As long as a caveat is in force, registration, endorsement or entry on the register document of title of any instrument of dealing is prohibited. The Registrar is statutorily obliged to refuse the registration because to do so would be a violation of an expressed provision of the code, [*Woon Kim Poh v Sa'amah bte Hj Kassim* [1987] 1 MLJ 400].

(2) The lien-holder is expressly given a right to caveat. He can only caveat if he has an interest in the land. [*Paramoo v Zeno Ltd* [1968] 2 MLJ 230 (FC); *Perwira Habib Bank (M) Bhd lwn Loo & Sons Realty Sdn Bhd (No. 1)* [1996] 3 MLJ 409; (No. 2) [1996] 3 MLJ 421].

(3) The court under section 417 of the code has the power to direct the Registrar to enter the Registrar's caveat to preserve the subject matter of the dispute between the parties. [See *Soh Ngoh v Venkateswara Sdn Bhd & Anor* [1976] 1 MLJ 242; *AR PL Palaniappa Chettiar v PL AR Letchuman Chettiar & Anor* [1982] 1 MLJ 232; *Boonsom Boonyanit v Adorna Properties Sdn Bhd* [1990] 3 MLJ 444; *Temenggong Securities Ltd & Anor v Registrar of Titles, Johor & Ors* [1974] 2 MLJ 45 (FC)].

(4) A Registrar's caveat may be removed upon application to the court. There is nothing unlawful in the entry of the Registrar's caveat merely because there is an existing charge, just as it is perfectly legitimate for another charge or caveat to be registered on encumbered land. The issue of priority is a different matter. [*Development & Commercial Bank v Land Administrator, Wilayah Persekutuan Bank v Land Administrator, Wilayah Persekutuan & Anor* [1991] 2 MLJ 180 (SC)].

(5) The only persons who can lodge a caveat are those entitled to obtain a title or interest in land. A personal claim for debt due and owing is not one having caveatable interest. [*EM Buxton & Anor v*

Packaging Specialists Sdn Bhd [1987] 1 MLJ 342; *Manang Lim Native Sdn Bhd v Manang Selaman* [1986] 1 MLJ 379 (SC); *Khaw Poh Chhuan v Ng Paik Peng* [1996] 2 CLJ 185; *Kho Ah Soon v Ooi Kar Seng (Properties) Sdn Bhd* [1995] 3 MLJ 293; *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782]; *Mega Air-Conditioning Sdn Bhd v Capital Dynasty Sdn Bhd & Anor* [2001] 1 MLJ 13; *Tan Heng Poh v Tan Boon Thong* [1992] 2 MLJ 1 (SC) ; *Kwan Yoon Fatt & Sons Sdn Bhd v Trends Building Sdn Bhd* [1994] 4 CLJ 996; *Pacline (M) Sdn Bhd v Tan Wee Yong* [1994] 4 CLJ 1027; *Pacline (M) Sdn Bhd v Tan Kim Foong* [1994] 4 CLJ 1016; *Jivanjit Kaur a/p Sohan Singh v Amar Singh a/l Sunder Singh* [2000] 4 MLJ 55].

(6) A registered proprietor may not have caveatable interest to caveat his own land. [*Eu Finance Bhd v Siland Sdn Bhd* [1989] 1 MLJ 195].

(7) A purchaser of land can caveat the land while waiting for specific performance of the sale and purchase agreement. [*Macon Engineers Sdn Bhd v Goh Hooi Yin* [1976] 2 MLJ 53 (FC); *Paul Murugesu s/o Ponnusamy v Cheok Toh Gong* [1996] 1 MLJ 843; *Abdul Rahim bin Syed Mohd v Ramakrishnan Kandasamy* [1996] 3 MLJ 385].

(8) A chargor may have a caveatable interest if he could satisfy the court that his claim to the interest in the property would raise a serious question to be tried. [*J Raju v Kwong Yik Bank Bhd & Anor* [1994] 2 MLJ 408 (SC)].

(9) Where the administration of the estate of a deceased is incomplete the legatee of a share in the residue has no interest in any of the property of the testator until the residue has been ascertained and as such will not have a caveatable interest in the land. [*Tan Heng Poh v Tan Boon Thong & Ors* [1992] 2 MLJ 1 (SC)].

(10) A person having a caveatable interest in respect of a portion of the land may caveat the whole land provided he expressly limits the effect of the caveat to protect only his claim. [*Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 (FC); *Mosbert Bhd (In Liquidation) v Stella D'Cruz* [1985] 2 MLJ 446 (SC)]. [Now see Amendment Act 2001]. In *Tan Heng Poh v Tan Boon Thong & Ors,* [1992] 2 MLJ 1]; the Supreme Court stated that for the purpose of entry and registration, a private caveat shall bind the whole alienated land or the whole registrable interest in the said land. If a person claimed only a limited title or interest in the alienated land, then his caveatable claim would be caught by the new proviso to section 322(1) of the code.

(11) The court has powers to amend the endorsement of a caveat where an error has occurred. [*Chng Sin Poey & Sons Sdn Bhd v Quek Lian Meng* [1979] 1 MLJ 98].

(12) It is for the caveator to satisfy the court that there are sufficient

grounds in fact and law for continuing the caveat in force. [*Nanyang Development [1966] Sdn Bhd v How Swee Poh* [1970] 1 MLJ 145 (FC); *Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd* [1992] 1 MLJ 263 (SC)].

(13) The effect of setting aside the judgment in default revives the original order of the court, which may include the order extending the notice of removal of the caveat. There is no provision in the code either expressly or by way of implication, to revive, renew or continue a caveat after its lapse. Once a caveat is set-aside or a caveat has lapsed and a memorial thereof is made by the registering authority, it is extinguished forever. The extinction is final and irrevocable. A caveat lapses at the expiry of six years from the time from which it took effect unless earlier withdrawn or removed. The provisions of section 329 (2) of the code disallows the Registrar to entertain any application for the entry of a further caveat, if it is based on the like claim as that on which the former was based in cases where the court has ordered the removal of the former or has turned down an application for extension of time. The lapse of the original caveat is not a bar to the entry of a fresh caveat. [*Damodarar v Vasudevan* [1974] 1 MLJ 128; *Thevathason v Joon* [1990] 3 MLJ 49; *Alagarsamy v Tai Phaik Kee & Anor* [1992] 1 MLJ 665].

(14) A caveat establishes priority and the onus is therefore on the holder of a subsequent equity to show facts which render it inequitable for the holder of a prior equity to insist as against him on that priority. [*Zeno Ltd v Prefabricated Construction Co (Malaya) Ltd & Anor* [1967] 2 MLJ 104; *Vallipuram Sivaguru v Palaniappa Chetty, Official Administrator as Administrator of the Estate of Gan Inn, Deed* [1937] MLJ 59 (CA); *Haroon v Nik Mah* [1951] 1 MLJ 209; *United Malayan Banking Corp Bhd v Goh Tuan Laye & Ors* [1961] 1 MLJ 169].

(15) Section 327(1) of the code clearly shows it does not require an applicant to be a person who has a registrable interest to qualify him to apply for the removal of the caveat. It need only be a person aggrieved by the existence of a private caveat and clearly a lien-holder is one although he has no registrable interest as long as he has an interest, a grievance. A lien-holder's caveat has priority over a private caveat where one is created earlier then the other. [*Chiew Sze Sun v Muthiah Chettiar* [1983] 1 MLJ 390].

(16) An injunction restraining dealings in land is not registrable under the code. [*Heng Bak Teong & Anor v Ng Ah Seng* [1988] 1 MLJ 406].

(17) With regard to the extent of court's jurisdiction to make orders for the interim preservation of property the subject matter of any cause or matter, it is to be observed that the Courts of Judicature Act 1964 enacts (by paragraph 6 to the schedule thereto) that the court may do so, by sale or by injunction or the appointment of a receiver or

the registration of a caveat or a lis pendens or in any other manner whatsoever. [*Tan Lay Soon v Kam Mah Theatre Sdn Bhd* [1992] 2 MLJ 434; *Puah Beh Hong v Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur* [1994] 2 MLJ 601].

(18) A claimant to any title or registrable interest in land may frame his case in one of two actions. If the facts pertaining to his claim enable him to bring his case within those vitiating categories specified under section 340 (2) of the code then he may frame his case under one or more of those categories as an action in rem. If, on the other hand, he is unable to bring himself squarely within the exceptions in favour of defeasibility, then, all is not lost to him: for, if he is able to constitute his complaints as an action in personam he may achieve the same result. Of course, as an action in personam, his claim may be subjected to all those discretionary considerations that operate in the grant or refusal of specific relief. In either case, he may be entitled to secure the status quo by the entry of a private caveat. [*Luggage Distributors (M) Sdn Bhd v Tan Hor Teng* [1995] 1 MLJ 719 (CA)].

(19) If the statutory declaration in support of the caveat contains insufficient particulars it may be rejected. [*Goh Keng How v Raja Zainal Abidin bin Raja Hussin* [1995] 3 MLJ 6].

(20) A trustee of a property held in trust as well as a beneficiary of any trust property is entitled to enter a caveat. However, a beneficiary who is only entitled to a share of the general residue has no right to enter a caveat against the property of the estate, when no part of the property of the estate has been expressly or impliedly devised and bequeathed under a trust created for his benefit. [*Khoo Teng Seong v Khoo Teng Peng* [1990] 3 MLJ 37].

(21) In *Macon Engineers Sdn Bhd v Goh Hooi Yin* [1976] 2 MLJ 53 Gill C J observed:

> It would seem abundantly clear from the authorities that, so long as there is in existence a valid agreement for the sale of land, the purchaser is entitled to lodge a caveat to protect his rights under the contract and to sue for specific performance of the agreement.

Further HRH Raja Azlan Shah F J (as HRH then was) observed:

> In my view the respondent had a contractual right under a contract of dealing in land which is a right of action against the vendor personally. That is a caveatable interest. There is statutory support for this view vide section 323(1)(a) of the National Land Code which appears wide enough to include any person claiming any right to title or interest in land. This section is enacted in wider terms as compared with the corresponding provisions of previous legislation — see section 166 of the Land Code 1926.

(22) A person who has an option to purchase may have the locus to enter

a private caveat. [*Sing Lian Express Sdn Bhd v Soh Kim Tee* [1974] 2 MLJ 24].

(23) The interest of an unregistered chargee can be protected by a private caveat. [*Sockalingam Mudaliar v Ra*

A person who has an interest in a lease or sublease may protect his interest by caveat. [*Pok Kew Chai v Yeoh Thian Seng* [1975] 1 MLJ 220].

(24) *masamy Chettiar & Anor* [1938] MLJ 237].

(25) A person who has an interest in a lease or sublease may protect his interest by caveat. [*Pok Kew Chai v Yeoh Thian Seng* [1975] 1 MLJ 220].

(26) Beneficiaries of the Estate of the deceased may enter caveat against the land of the deceased. [*Haji Yahya bin Yusoff & Anor v Hassan bin Othman & Anor* [1978] 2 MLJ 153]; *Lee Ah Thaw & Anor v Lee Chun Tek* [1978] 1 MLJ 173; *Jit Kaur v Parl Singh* [1974] 2 MLJ 199].

(27) In *Sui Soon Lee Realty & Co (M) Sdn Bhd v Fatimah bte Hj Mohamed* [1995] 4 MLJ 419 among the issues was whether whole of land can be caveated when the person is only claiming a registrable interest in a portion of the land. The court held:

(28) The current position of the law in the country is that a person who claims a registrable interest in a portion of land may caveat the whole land, provided that the caveat is expressly limited to protect only that claim, which must be an interest recognized under the NLC as being either registrable or entitled to protection.

(29) Although there was no machinery for registering an injunction on the register document of title under the NLC, by analogy to the interim protection of land by way of the registration of a lis pendens as reflected in *Damodaran v Vesudevan* [1975] 2 MLJ 231, the court allowed the registration of an injunction for the interim protection of the part interest in said land pending disposal of the suit.

(30) An injunctive order would temporarily protect the defendant's part interest in the said land in view of s 25(2) and para 6 of the schedule to the Courts of Judicature Act 1964 because:

(i) the land office had refused on two occasions to accept her applications for entry of private caveats in spite of the decision of the Federal Court in *Chor Phaik Har*; and

(ii) the fate of the defendant's third application for entry of the private caveat was still unknown.

(1) The Court of Appeal in *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors* [1995] 2 MLJ 770 stated that there are strong policy reasons warranting the conferment upon the director of a

limited company of a caveatable interest in his company's immovable property for the limited purpose of protecting that property from being dealt with contrary to law.

(2) In *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 783, the Court of Appeal considered whether there was a caveatable interest in an unconcluded contract. The court held that:

(3) In order to sustain a caveat, a caveator must first pass through three stages:

(i) whether he has disclosed a caveatable interest in his application under s 323(1) of the Code;

(ii) if he has established a caveatable interest, then, whether the evidence produced in support of his claim discloses a serious question to be tried; and

(iii) if both questions are resolved in the caveator's favour, then whether the balance of convenience or justice, lies in favour of the caveat remaining on the register pending the disposal of his suit.

(4) There was no assertion in the application that there was a concluded contract for the sale and purchase of the land. In the absence of such an assertion, it could not be said that the respondent had a claim to the title to the land. Until and unless a purchaser has an enforceable contract for the sale of land, he can lay no claim to the title to registered land. A fortiori, he has no interest that is capable of protection by the entry of a caveat.

(5) The judicial commissioner's judgment revealed that she did not address her mind at all to this aspect of the case. This non-direction amounted to a serious misdirection on her part. Had she adopted the correct approach, she would have concluded that the respondent had no caveatable interest in law. On this ground alone, the caveat was unsustainable and ought to be removed.

(1) In *Manilal & Sons (M) Sdn Bhd v Pentadbir Tanah Daerah, Kulim* [1997] 3 MLJ 573 the Court of Appeal considered whether the transfer of land was valid despite the presence of a private caveat. On the facts the court stated that the caveat by the appellant was still on the register. As such, the first respondent was prevented from entering the lien holder's caveat and registering the transfer in view of sub-s (2) of section 322 in particular para (c) of the code.

(2) In *Pekan Nenas Industries Sdn Bhd v Chang Chin Chuen & Ors* [1998] 1 MLJ 465 the Federal Court considered whether mere knowledge of an adverse unregistered interest amounts to fraud and so sufficient to defeat the title of the registered proprietor. On the facts, the court stated that, the issue of whether mere knowledge of an unregistered claim or interest does not amount to fraud within the meaning of section 340(2)(a) of the code relates to the issue of whether the purchaser, after entering into the agreement but prior

to paying the full purchase price, discovered the second caveat.

(3) In *Kundang Lakes Country Club Bhd v Garden Masters (M) Sdn Bhd* [1999] 2 MLJ 537 the Court of Appeal stated that a claim for a mere debt cannot give rise to a caveatable interest.

[13] From the decided cases, it is clear that a caveat has a specific purpose and is not a cause of action but a quick relief to protect interest (capable of being protected under NLC) in the land in the nature of a statutory injunction and it is never meant to assist the indolent as in the instant case.

[14] We have read the appeal records and submissions of the parties in detail. We are grateful to the counsel for the comprehensive submissions filed by the parties. After giving much consideration to the submissions of the respondent, we take the view that it is fit and proper case to allow prayers (b), (c) and (d) only. Our reasons, inter alia, are as follows:

(a) it is clear from the decided cases such as *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212, caveats per se has nothing to do with cause of action and it only stands as a notice to world at large of encumbrance or potential disputes and the caveats have to be removed from the register if the respondent cannot justify its presence according to law. The jurisprudence has been set-out earlier and needs no repetition;

(b) there are also sufficient authorities to say that once the lien holder's caveat is not sustainable under the law the court can order the title to be returned to the registered owner (see *Janab's Key to Practical Conveyancing, Land Law and Islamic Banking* (1st Ed), (2003) pp 788–789 commentary to s 281 of the NLC). In *Perwira Habib Bank (M) Bhd lwn Loo & Sons Realty Sdn Bhd & Satu Lagi (No 2)* [1996] 3 MLJ 421, the Court of Appeal held:

> Since the court had held that the lien holder's caveat in question was not valid and was unenforceable and the equitable lien did not exist, the appellant was not entitled to retain the title deed. Therefore, it was proper for the High Court to order that the lien holder's caveat be removed by the registrar under s 331(4)(a) of the Code and the issue document of title delivered to the second respondent,

(c) in the instant case, we are satisfied that the appellants are entitled to the prayers (b), (c) and (d).

[15] For reasons stated above, we allow the appeal with costs.

[16] We hereby order so.

Appeal allowed with costs.

Reported by Afiq Mohamad Noor